IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/10/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.9167 of 2001

The Management of Kancheepuram
Central Co-operative Bank Ltd.,
Rep. by its General Manager
Kancheepuram ..... Petitioner

-Vs-

1. The Deputy Commissioner
of Labour (Appeals)
Chennai

2.R.Murugappan
Kancheepuram ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, as stated therein.

For Petitioner : Mr.R.Balasubramanian

For Respondents : Mr.R.Vijaykumar for R1
Mr.M.Ramamoorthi for R2

:ORDER

This writ petition has been filed for the issuance of the writ of certiorari, to call for the records pertaining to the orders of the first respondent made in T.S.E.No.1 of 1997 dated 05.07.1999, and to quash the same.

2. The brief facts that are necessary for the disposal of the writ petition is as follows:
The second respondent was employed as a Supervisor Secretary in the petitioner/ Co-operative Bank from the year 1962. He went on leave from 12.05.1995 to 14.05.1995. Thereafter, he ought to have joined duty on 15.05.1995. But, he did not report for duty on that day. But, he reported to duty on 29.05.1995, without any intimation or prior leave application for the period from 15.05.1995 to 28.05.1995. Therefore, charges were framed against the second respondent on the ground that he did not join duty immediately after completion of the leave and that he gave a false statement that he had sent a leave letter by post. But, no such leave letter was received. Against

the misconduct, enquiry was conducted the charges were proved. On the basis of the enquiry report, the second respondent was imposed a punishment of dismissal from service.

Against the order of dismissal, the second respondent moved the appellate authority under Tamil Nadu Shops and Establishments Act. The appellate authority after considering the submissions made by the appellant and the respondent herein, passed an order setting aside the order of dismissal and allowed the appeal. Aggrieved by the order of the appellate authority, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the appellate authority has applied a wrong provision and has come to the conclusion that the punishment is invalid. He referred to a Provision which provides absenting for more than two years and the appellate authority came to the conclusion that only for violation of that rule, he was dismissed form service. But, in fact, there is another bylaw 45 (8) which deals with such absence similar to the petitioner's absence. This Bylaw makes the act punishable with imposition of penalties. Therefore, the bylaw provides for punishment on a person for not joining after completion of the leave. Therefore, the order of the appellate authority is liable to be set aside for non-application of mind.

4. Admittedly, the second respondent has already retired from service. Further the act complaint of by the second respondent is only staying away from duty for 14 days. The learned counsel for the petitioner submitted that unlike the labour Court, the appellate authority under the Tamil Nadu Shops and Establishments Act, cannot exercise power under Section 11(A) of the Industrial Disputes Act and therefore, the punishment imposed by the petitioner cannot be interfered with or modified by the appellate authority.

5. Be that as it may, the punishment awarded for the absence of 14 days is disproportionate to the act committed. The order of dismissal is not justified on any ground. It is a well established principle that imposition of punishment shall be proportionate to the act complained of against the employee. Applying that principle, the order of termination, for the absence of 14 days, appear to be not proportionate. Therefore, on that ground alone the argument of the learned counsel for the petitioner fails.

6. Considering the facts and circumstances of the case, it is not a fit case for interference exercising power under Article 226 of the Constitution of India and there is no illegality committed by the appellate authority.

7. In the result, the writ petition fails and the same is dismissed. No costs.

Index:yes
Internet:yes

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